

“Blogging is a way of changing the relations of authority in the public sphere”

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Your blog, [Balkinization](#), is one of the most widely read blogs on constitutional law today. What gave you the idea of starting Balkinization?

I started the blog in January 2003. My friend Eugene Volokh had started a blog in August 2002. I met Eugene at the annual conference of the [Association of American Law Schools](#) in early January 2003, where we ran into another mutual friend, Glenn Reynolds. He had started his blog, [Instapundit](#), in 2001. The three of us had a drink, and we talked about blogging.

In the fall of 2002, the [Yale Information Society Project](#) had held the first academic conference on blogs, where we had brought together a number of important early adopters of blogging. Speakers included Glenn Reynolds, Josh Marshall, who runs [Talking Points Memo](#), Jeff Jarvis, who runs [Buzzmachine](#), and Mickey Kaus. They were pioneers in the blogosphere, and we asked them about the relationship of blogging to their work and what they were trying to achieve through blogging. We also talked about legal issues arising from this new type of communication. I was particularly interested in how blogs would affect the public sphere.

When I met with Eugene and Glenn in early 2003, Glenn encouraged me to start a blog. I did some research and started my blog within a week after that meeting.

The blog began as an opportunity to talk to a wider audience. The late nineties/early 2000s were a very tumultuous time in American politics. There had been a contested election, a presidential impeachment, and of course, the 9/11 terrorist attacks. If you were a law professor at that time and you wanted to talk to a wider audience, you did so through newspaper op-eds. But op-eds were not a very good method of reaching a general public: You could only get a newspaper to publish one about once a year, and op-eds would be edited and cut. Editors would not want you to say certain things. It would take weeks to get op-eds accepted, and even then, it would ultimately be up to the editor whether and when a piece would get published. So the blog appeared to me a much better means to talk to the public about important legal issues. That's what I set out to do. But what actually happened was quite different.

What were some of the major developments since you started Balkinization more than ten years ago?

For the first year or so, it was just me blogging. I wrote about what I thought were interesting issues in constitutional law. Sometimes, what I wrote was directed at fellow scholars, occasionally it concerned current events, and I soon discovered that

what I really wanted to do was a scholarly blog. Around the middle of 2004, I started inviting people to do guest blogs. The first person I invited was [Cass Sunstein](#), who did a short blog post on an issue that he cared about. I then reached out to other friends. And after a while, I invited a couple of them to join in on the blog rather than just be guest bloggers. Balkinization became a group blog. At that point, the blog took on a life of its own, and it became about what the individual authors wanted to write about. I did not control what they wrote about. [Marty Ledermann](#), now a Georgetown Law professor, but then in private practice, was very interested in the war on terror and the issue of torture, and wrote some outstanding posts on these issues. [Sandy Levinson](#), my old friend and frequent co-author, wrote about everything under the sun, and eventually wrote a great deal about why the United States needs a new constitution. I invited a number of political scientists as well.

You quickly discover that many people don't write very much. Only a small number write very frequently. Some people write every now and then, and many people write only once and never write again.

We have no advertising on the blog, but I did start to feature newly published books on the right hand side of the blog. Several law professors approached me to become regular contributors and have their book featured on the blog – some of these wrote one or two blog posts, and then never wrote again. Eventually, I had people promise that they would write a number of blog posts. I quickly learned that although there are some people who like to blog, there are a much larger number of people who don't.

What does it take to like blogging, to be able to blog?

In order to like blogging, you need to have opinions, and you need to be willing not only to express your opinions online before everyone, but also to risk being wrong about your opinion. As time went on, it became obvious that [Volokh Conspiracy](#), [Instapundit](#) and my own blog were becoming different things.

Instapundit became a high profile political blog. Glenn does not write long posts, but rather links to articles that he finds interesting. It was a bit like Twitter, before there was Twitter. It's not a scholarly blog, but primarily a political blog. Glenn has very strong political opinions and he would use the links as a means to make his political points. Eugene, at Volokh Conspiracy, aims more at a conservative audience, and especially libertarians. As he invited friends to write on the blog, they would develop their own personas – some would write about political issues, some about foreign policy, some about legal issues, others about language and logical puzzles. Volokh Conspiracy has become a very interesting combination of politics, law and popular entertainment. It is popular not in the sense of being non-scholarly but in the sense of having lots of entertaining content, including puzzles and quizzes. It is also loosely connected to the conservative movement, and provided a voice for conservatives and libertarians, which, I think, was crucial to its success.

Balkinization's bloggers, by contrast, were almost exclusively American liberals, and primarily scholarly in their focus. Over the years, I have emphasized the blog's scholarly mission by hosting symposia on recently published books. We just had

a symposium organized by [Gerard Magliocca](#), on [Bruce Ackermann's](#) recent book [We, the People, Volume 3: The Civil Rights Revolution](#). There will be more this summer. These symposia are perfectly in line with what I wanted the blog to be. Your persona, and what you want to blog to cover, shapes what people expect of the blog, and gives the blog its general direction.

You said that you started the blog in order to reach a wider audience – but now, it's a scholarly blog?

Yes. I originally sought to reach a wider audience – but discovered that even more than that, I wanted to write about scholarly issues in a serious way. A similar thing happened with writing for [The Atlantic](#). My initial thought was that I'd reach out to a wider audience. I wrote a number of very elaborate pieces for the Atlantic. And then I realized that those pieces were still rather scholarly in nature.

Is your audience then largely other scholars? And does the blog serve as a means to start conversations with other scholars online?

My audience is primarily other scholars, but it includes anybody who is interested and wants to read the blog. I don't specifically set out to write for a popular audience; even so, many people who read the blog are not law professors or lawyers.

The scholars that write on the blog—and other blogs—communicate with each other, but you should not confuse it with a live person-to-person discussion. Communication on the blog is asynchronous—by this I mean that posts occur at different times, not contemporaneously and in immediate succession. A blog is a platform or place, but a live conversation is not a platform or place.

Law professors who want to reach other scholars often ask whether they can do a guest blog post on Balkinization. To give you an example: The Supreme Court will soon issue an important decision on the Affordable Care Act and its contraceptive mandate—the [Hobby Lobby case](#). *Hobby Lobby* is going to be one of the most important cases of the Term, involving questions of religious freedom as well as the fate of the Affordable Care Act, questions of sexual equality and reproductive justice. Marty Ledermann wrote a [series of brilliant and elaborate blogposts](#) on the case. The idea that these posts were primarily directed to a popular audience is implausible. They were elaborate legal arguments, covering almost every aspect of the case. In the end, there were a dozen posts, which combined reached over 70,000 words. In response, a number of professors reached out to us and asked to guest blog, in order to cover still over issues. We published their posts as well.

When people want to make a statement, Balkinization is a convenient place to do so, and they use it for that purpose. Conversation is a slightly different thing than interactions on a blog. During the debates on the constitutionality of the Affordable Care Act, there was a lot of back and forth between Balkinization and Volokh Conspiracy; my good friend [Randy Barnett](#) and I talked a lot about the case to each other, posted about the case, linked to each other, and responded to each other, and several other commentators joined in. Today, you can see that sort of interaction on

blogs like [JustSecurity](#) and [Lawfare](#). Both deal with security issues, but from different political perspectives.

Verfassungsblog also reaches out to a wider public – anything we should be looking out for?

If you want Verfassungsblog to be a blog that reaches the wider public, then you need to find law professors who can actually talk to the public – because it is quite likely that most law professors will end up writing in a scholarly style. Not necessarily in the scholarly style of a law review article, but in a style that's a challenge for many non-lawyers to read and understand.

When you say “not as scholarly as in a journal”, how would you characterize the difference between a journal and a blog, if both are means of scholarly communication?

Let's say the *Hobby Lobby* case comes down. Within a day or so, you will have read the opinion. You will have made up your mind about the big issues. When you write about it on the blog, you don't need to add a lot of citations and cite to the existing literature. You don't need to follow the format of a journal with the roadmap that student editors often expect: “In Part 1, I will talk about X, in Part 2 I will talk about Y and so on, and Part 5 is a conclusion”. You can go straight to the heart of the matter and you can express your opinions directly. What you say may be at a very high level of quality, but it does not take the form of a law review article. It is a statement made to a public. A law review journal is a very specialized form of writing that takes months to produce, requires enormous amounts of cite-checking, re-organizing, and editing. Above all, it takes a great deal of time, and when the result comes out a year or so later—well, most of these ideas could have been stated fairly succinctly in a blog post.

So do you believe that blogs might be able to replace scholarly journals?

No, they will not replace them, because academic journals serve a different function. The function of a law journal is to produce legal scholarship. This obligation has various sociological features and effects. First, legal scholarship establishes a certain agenda for other scholars. Second, it establishes the author as a scholar who knows something. Third, producing such scholarship is a necessary step in the achievement of tenure. Fourth, writing legal scholarship is a method of achieving scholarly status in a pre-existing profession. Fifth, legal scholarship—in America, at least—is a method of giving law students things to do. Any law student who has worked on a law journal will tell you that working on these journals has some intellectual interest, but a great deal of their work is drudgery. It is a lot of work checking and rechecking citations and making sure that these citations conform to the bluebook. Many law students will say it's worth it because they get to work with some great scholars, but it is also a lot of work.

Law journals thus serve multiple functions other than simply speaking to a public. A legal blog dispenses with those particular sociological functions, but it has its own sociological functions.

So how would you describe the main sociological function of blogging?

It connects law professors to the public sphere in a particular way. Before I started the blog, it was customary for law professors to occasionally speak to members of the press in interviews. This was a very elaborate affair: Members of the press would call you on the phone, you'd set up a time for an interview, you would talk to the member of the press for half an hour, and then a day or two later, you would see the article. The article would have a few elements of what you said, but maybe not quite what you wanted to say. It would not include the most important thing that you said, but rather something that the journalist thought would be important to the way they wanted to cover the story. While there was normally no direct misquotation, it was still not a very satisfying experience.

With the blog, I get to write about what I believe to be important and in the way I want to say it, and then a journalist might simply quote the blog. The blogosphere changed journalism: journalists used to be trusted by the general public to be experts in the fields they were covering. But with the blog, you now have direct access to the professor of constitutional law, who tells you directly what he or she thinks the issue is. So blogging is both a supplement to and an end-run around the traditional forms of journalistic authority. Blogging, like many other Internet media, is a way of changing the relations of authority in the public sphere.

Did blogging affect the way in which you conduct your scholarship?

A few times I would write up an idea in a blog post, and then the blog post would develop further and eventually turn into a piece of scholarship. So the blog post, in a way, could be seen as the first draft of a scholarly project. But it did not make my scholarship more popular in its tone.

In Germany, there is some reluctance towards the blog format: there appears to be a fear that it might not be academic enough, that a blog is not actually research. Would you agree?

It depends on what you think the blog is. There are three different tasks of the American scholar: the first task is teaching, the second task is writing and research, and the third task is service to the legal profession and to the larger world. Blogging is not the first, and it is not the second, it is the third. As long as you understand that blogging is a form of service to the legal profession and to the larger world, there is no problem.

